

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE

July 11, 2003

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Westin Hotel (San Francisco Airport) on July 11, 2003. Attendance was as follows:

MEMEBERS PRESENT:

Keith Paul Bishop
Bruce Dravis
James K. Dyer, Jr.
Teri Shugart Erickson
James F. Fotenos
Steven K. Hazen
Mark T. Hiraide (via teleconference)
Brian D. McAllister
David M. Pike
Cynthia Ribas
Randall Brent Schai
James R. Walther
Daniel J. Weiser
Neil J Wertlieb
Nancy Wojtas
Brian Wong

MEMBERS ABSENT:

Curt C. Barwick
John C. Carpenter
Nelson D. Crandall
Timothy J. Fitzpatrick
Victor Hsu
John H. Marlow
Keith B. Martin
Stewart Laughlin McDowell
Ethna M. S. Piazza

LIAISONS AND GUESTS PRESENT:

David Caplan, Executive Committee
Terry Miller, State Bar of California
Gail Oshima, Department of Corporations

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda, which are not described in these minutes.

I. ADMINISTRATIVE MATTERS.

A. Opening Remarks and Announcements. The meeting was called to order by Co-Chair Bruce Dravis at approximately 9:30 a.m. Mr. Dravis reported that the

following persons were approved by the Executive Committee as the officers of the Committee for next year:

<u>Name</u>	<u>Office</u>
Steven Hazen	Co-Chair
Nancy Wojtas	Co-Chair
James Fotenos	Vice-Chair, Legislation
Brian McAllister	Vice-Chair, Communications
Randall Schai	Vice-Chair, Education
Stewart McDowell	Secretary

Mr. Dravis also reported that the Executive Committee approved the following six new members of the Committee for next year: Suzanne Weakley, Steven Stokdyk, Matt Gemello, William R. Sawyers, Deborah J. Ruosch and Lemoine Skinner.

The next meeting of the Committee will be held by video conference at the law offices of Buchalter, Nemer, Fields & Young in Los Angeles, and Mayer, Brown, Rowe & Maw LLP in Palo Alto. Because of the new officers' orientation scheduled for 1:00 p.m. in Oakland on that day, the Committee meeting will begin at 9:00 a.m.

B. Minutes of June 6, 2003 Meeting. The minutes of the June 6, 2003 meeting previously circulated to the members were approved by the Committee with minor clerical revisions that Steve Hazen will forward to Stewart McDowell.

II. LIAISONS' REPORTS AND DISCUSSION.

A. Securities and Exchange Commission. In Rosalind Tyson's absence, Co-Chair Bishop reported on the status of SEC staff recommendations concerning the proxy process review. Mr. Bishop also reported that final action concerning the pending attorney conduct rules has been postponed until August.

B. Department of Corporations. Gail Oshima reported on recent events at the California Department of Corporations ("Department"). Ms. Oshima reported that the Department has resolved all of its concerns relative to SB 220 (Romero), relating to fax filings. Ms. Oshima also reported that emergency regulations regarding the electronic filing of 25102(f) notices have been posted to the Department's website and the electronic system is expected to be available to the public by the end of July.

C. Business Law Section Executive Committee. David Caplan provided a brief overview of the recent activities of the Business Law Section Executive Committee.

D. Secretary of State. Co-Chair Dravis reported on the status of clean-up legislation relative to the California Corporate Disclosure Act (AB 55) currently under consideration by the California Secretary of State. An extensive discussion followed. The Committee discussed potential legislative and regulatory alternatives, including (i) the designation of the filer as a public company similar to the approach taken by Nevada,

(ii) the provision of a link to each public company's filings with the SEC, and (iii) the conformance of AB 55 to the laws, rules and regulations of the SEC. Bruce Dravis and David Caplan will prepare a response letter to the Secretary of State concerning the contemplated revisions.

E. Legislation. Terry Miller, Principal Legislative Consultant, State Bar of California, provided a summary of pending legislation of interest to the Committee, including the following bills:

- SB 220 (Romero). This is the Committee's fax filings bill. The bill passed the Senate 40-0 on April 10th and is scheduled to be heard by the Assembly Appropriations Committee on July 16, 2003.

- SB 735 (Ackerman). This bill would eliminate the sunset provisions of Sections 307, 5211, 7211 and 9211 of the California Corporations Code relating to the participation in a meeting of a board of directors through electronic video screen communications. Mr. Miller informed the Committee that this bill was out of the Senate, recently approved by the Assembly Banking Committee and is on the Assembly floor with recommended consent.

- AB 169 (Chavez). This is the Committee's legislative proposal concerning the application of the finance lenders law to venture capital companies. The bill passed the Assembly 79-0 on April 28th and passed the Senate 38-0 on June 24th. The bill has been returned to the Assembly for amendment and Mr. Miller informed the Committee that the legislation may be impacted by a pending lawsuit relating to usury. Potential responses to legislative challenges were discussed at length. Co-Chairs Bishop and Dravis will draft correspondence in opposition to any proposed amendments with the exception of those previously discussed and accepted by the Committee pertaining to the addition of legislative intent language.

A discussion of pending legislation followed. Mr. Miller noted that today is the last day for major policy committees in the Legislature for this term. Jim Fotenos provided an update concerning AB 1031 (Correa), pertaining to the expansion of enforcement authority of the Department; and AB 1101 (Steinberg), regarding an exception to the attorney-client privilege when an attorney reasonably believes that disclosure is necessary to prevent a criminal act likely to result in death or substantial bodily harm to an individual.

F. Partnerships and LLC Committee and FASB Reporter. Steve Hazen reported that the Partnerships and LLC Committee has not met since the last meeting of the Committee. Mr. Hazen also reported that FASB has recently published an exposure draft of FASB Statement Number 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. He is continuing to monitor FASB Interpretation Number 46, *Consolidation of Variable Interest Entities*.

III. OPINION PROJECT

Brian Wong provided an update on the opinions project. Volunteers were obtained at the June meeting of the Committee. Mr. Wong will contact the volunteers to coordinate their efforts and provide a status report to the Committee at the August meeting. Mr. Wong will also contact Nelson Crandall to obtain copies of the materials previously developed. The Committee also discussed the draft insert to the report of the Opinions Committee that was distributed to the members of the Committee prior to the meeting. The Opinions Committee would like to receive feedback and members of the Committee were requested to respond directly to the Opinions Committee.

IV. POTENTIAL AFFIRMATIVE LEGISLATIVE PROPOSALS

A. 25118(b) Definition of Aggregate Evidences of Indebtedness. Dan Weiser reported that he was recently informed that the Executive Committee may not want to proceed with this legislative proposal at this time. Mr. Weiser will investigate this further and provide a status report to the Committee at its August meeting.

B. Electronic Communications. Brian McAllister and Randall Schai provided an update on the status of the Committee's legislative proposal relating to electronic communications and its interaction with ESign and the Uniform Electronic Transactions Act (UETA). The legislative proposal, which has been revised to require corporations to permit its shareholders to attend shareholders meetings in person, has been submitted to the Executive Committee for approval.

C. Fiduciary Duties to Creditors. Dan Weiser reported that an article is being drafted for consideration by the Committee concerning fiduciary duties to creditors under California law.

V. WEBSITE PROJECTS

A. Website Update. Brian McAllister reported that the State Bar of California is migrating its website to the State of California website and that, consequently, no updates to the Committee website are expected until August.

VI. OTHER PROJECTS

A. Blue Sky Guide. Co-Chair Bishop reported that the update of the *Blue Sky Guide* has been completed by Mark Hiraide, that a publisher has been selected and that the *Blue Sky Guide* may be released as early as August.

B. Educational Activities. David Pike reported that Brian McAllister, Randall Schai and Jim Walther will present a program concerning recent business law developments of interest to California corporate lawyers at the Annual Meeting of the State Bar of California in September.

C. Guide to Organizing California Corporations. Teri Erickson provided an overview of the project and the materials distributed to the members of the Committee prior to the meeting. Ms. Erickson solicited volunteers to work on the project.

D. Corporate Governance Curriculum Project. Co-Chair Dravis provided a status report on the corporate governance curriculum project. Preliminary responses indicate that universities have not significantly changed their curriculum or imposed mandatory classes in response to the highly-publicized recent events concerning corporate governance and related state and federal legislation.

VII. NEW BUSINESS/INFORMATIONAL.

A. Practice Issues. Co-Chair Bishop provided an overview of California law regarding multi-jurisdictional practice, proposed Rule 967 of the California Supreme Court Multi-Jurisdictional Practice Implementation Committee, and his response letter to that committee that was included in the meeting materials of the Committee. An extensive discussion followed.

B. NYSE Letter. Co-Chair Bishop provided an overview of the Interim Governance Principals of the New York Stock Exchange adopted by its Board of Directors on June 5, 2003, and the related Initial Report of the Special Committee on Governance of the NYSE that were included in the meeting materials of the Committee. The Committee has been invited to comment on the Interim Governance Principals and Keith Bishop and Nancy Wojtas volunteered to draft a comment letter from the Committee.

The meeting was adjourned at approximately 12:30 p.m.

James K. Dyer, Jr., Secretary